

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revision No. 1800 of 2007

Date of decision: September 27, 2007

Kamaljeet Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

Present: Mr. G.B.S. Dhillon, Advocate
for the petitioner.

....

S.S.SARON, J. (ORAL)

Heard learned counsel for the petitioner.

The petitioner has filed this revision petition assailing the order dated 31.08.2007 passed by Sessions Judge, Ludhiana, whereby the application filed by the prosecution for summoning Sukhjot Singh in exercise of powers under Section 311 CrPC has been allowed.

The petitioner is facing trial for having committed offences under Sections 302 and 201 IPC. During the course of trial, the Addl. Public Prosecutor moved an application before the learned trial Court for resummoning Sukhjot Singh-complainant as the prosecution witness. It was stated that he was inadvertently given up. The said application has been allowed in pursuance of the impugned order.

Learned counsel for the petitioner has submitted that the learned Addl. Public Prosecutor filed an application before the learned trial Court on 13.03.2007 in which it was categorically stated that he gave up Hardial Singh and Sukhjot Singh PWs as unnecessary. On the basis of the said statement of the

learned Addl. Public Prosecutor, the trial Court accepted the request and adjourned the case for the remaining PWs. Therefore, it is submitted that in case the witnesses were given up as unnecessary, it cannot be said that they are given up inadvertently.

In my view this is hardly of any consequence as the statement made and the orders passed are not to be construed and considered as statutory provisions. It is the tenor and intent of the order and the statements made that are to be considered. In case a statement was made that Sukhjit Singh PW was given up as unnecessary, it cannot be said that the same was not an inadvertent mistake. Therefore, the said contention of the learned counsel for the petitioner is devoid of merit.

Learned counsel for the petitioner has however further submitted that the examination of Sukhjit Singh PW would prejudice his right as his defence has been disclosed.

During the course of hearing, it is not disputed by the learned counsel for the petitioner that the statement of the petitioner in terms of Section 313 CrPC has not been recorded. The second objection taken for summoning Sukhjit Singh-PW is therefore also inconsequential. It may be noticed that the provisions of Section 311 CrPC provide for power to summon material witness, or person present. It is inter alia provided that any Court may, at any stage of any inquiry, trial or other proceedings under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and reexamine any person already examined, and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case. Therefore, the Court has been empowered to summon any person as a witness at any state of

inquiry, trial or other proceedings. What is to be ascertained is that the witness who has been summoned to depose, is necessary for the just decision of the case. Sukhjit Singh PW who has been summoned is admittedly the complainant. Therefore, it cannot be said that he was not a necessary witness. Besides, he had identified the dead body of the deceased Manjinder Singh son of the petitioner. Therefore, also it cannot be said that he is not a necessary witness.

In the circumstances, there is no merit in this petition and the same is accordingly dismissed.

September 27, 2007
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(S.S. SARON)
JUDGE